Korns Bakery, Inc.[1] ***and*** **Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO** ***and*** **Moshe Nadov**

Korns Bakery, Inc., and its alter ego 4322 Corporation, A Single Employer ***and*** **Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO** ***and*** **United Production Workers Union, Local 17–18, Party to the Contract**

Korns Bakery, Inc., and Korns Bakery, Inc., Debtor In Possession ***and*** **Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO.** Cases 29–CA–16976, 29–CA–17040–1, 29–CA–17040–2, 29–CA–17177, 29–CA–17877, 29–CA–17994, and 29–CA–20854

September 24, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On April 2, 1998, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief. Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO, filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified[4] and to adopt the recommended Order as modified and set forth in full below. [5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Korns Bakery, Inc., and its alter ego 4322 Corporation and Korns Bakery, Inc., Debtor in Possession, Brooklyn, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making unilateral changes in the Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO collective-bargaining agreement without notifying the Union about such proposed changes, and without bargaining with the Union concerning such proposed changes.

(b) Enforcing a collective-bargaining agreement with United Production Workers Union, Local 17–18, covering the bargaining unit set forth and described in Respondent's collective-bargaining agreement with the Union at a time when such employees were represented by the Union and at a time when Local 17–18 did not represent an uncoerced majority of Respondents employees.

(c) Enforcing the Local 17–18 union-security clause.

(d) Threatening its unit employees that it would go out of business if its employees continued their membership in the Union.

(e) Refusing to permit union representatives to visit its facilities for the purpose of meeting with unit employees to discuss matters related to wages, hours, and other conditions of employment, pursuant to the terms of their collective-bargaining agreement.

(f) Threatening union agents with severe bodily harm when visiting Respondent's facility to discuss wages, hours, and other conditions of employment, pursuant to the terms of their 1993 collective-bargaining agreement or any future bargaining agreement.

(g) Reducing the working hours of Nadov, or any other unit employee, because of his or her membership in or activities on behalf of the Union.

(h) Refusing to provide the Union with information requested by the Union, relating to terms and conditions

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[1] The name of the Respondent has been corrected to conform with the pleadings.

[2] Exceptions were filed only to the judge's finding that Attorney Orfan requested wage-related information regarding the Respondent's unit employees during the meeting on February 26, 1997, and to the portion of the judge's decision captioned "The Meetings on November 27, 1996, and February 26, 1997." No exception, however, was filed to the judge's dismissal, in that portion, of the complaint allegation that the Respondent bargained in bad faith by declaring that the parties had reached impasse when no impasse in negotiations had occurred

[3] The letter from Local 3, Bakery, Confectionery and Tobacco Workers Union, AFL–CIO to the Respondent requesting recognition was dated March 28, 1997. We correct the judge's decision to the extent that it erroneously indicates that this letter was sent between the parties' November 1996 and February 1997 meetings. The judge's conclusions are unaffected by this error.

[4] The judge found, inter alia, that the Respondent failed to recognize and bargain in good faith with the Union in violation of Sec. 8(a)(5) and (1) by refusing to recognize the Union at a time when it was the collective-bargaining representative of the Respondent's baking employees. We decline to adopt this finding, as this violation was neither alleged in the complaint nor sought by the General Counsel and, indeed, was specifically disavowed by him. Cf. *Pergament United Sales,* 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Our reversal of this finding does not affect our adoption of the judge's recommended Order, the terms of which remedy 8(a)(5) violations to which no exceptions were filed.

[5] We have modified the recommended Order to comport with the language in our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

of employment of the unit employees covered by the parties' 1993 collective-bargaining agreement, or any future bargaining agreement.

(i) Refusing to meet with the Union to discuss any unilateral changes in the parties' 1993 collective-bargaining agreement, or any future collective bargaining agreement.

(j) Discharging any employee because of membership in, and activities on behalf of the Union, or because they may give testimony in a Board proceeding.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw recognition of Local 17–18 and cease giving any effect to the terms of the collective-bargaining agreement with Local 17–18, and return to the unit employees covered by such agreement all dues and other moneys deducted from such employees.

(b) Recognize the Union as the collective-bargaining representative of its employees set forth in the unit described above and reinstitute all terms and conditions of the 1993 collective-bargaining agreement with the Union and make whole the unit employees for any moneys or monitary benefits they would have received pursuant to the terms and conditions of the 1993 collective-bargaining agreement with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit described above, concerning new terms and conditions for a successor collective-bargaining agreement, and if an agreement is reached, execute such agreement in writing.

(d) Pay to the Union all dues and fees that would have been deducted from the unit employees' pay and remit them to the Union with interest as computed above.

(e) Pay to the Union all funds and other benefits required by the terms of the 1993 collective-bargaining agreement with interest as computed above.

(f) On request, furnish to the Union all the information it requested, as described in the judge's decision.

(g) Within 14 days from the date of this Order, offer Moshe Nadov full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(h) Make Moshe Nadov whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the judge's decision.

(i) Within 14 days from the date of this Order, remove from its files any reference to Moshe Nadov's unlawful discharge, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(j) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(k) Within 14 days after service by the Region, post at its Brooklyn, New York facility, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1992.

(l) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT make unilateral changes, in the Local 3 Bakery, Confectionery, Tobacco Workers Union, AFL–CIO, collective-bargaining agreement without notifying the Union about such proposed changes, and without bargaining with the Union concerning such proposed changes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT enforce a collective-bargaining agreement with United Production Workers Union, Local 17–18, covering the bargaining unit set forth and described in our collective-bargaining agreement with the Local 3 at a time when such employees were represented by Local 3 and at a time when Local 17–18 did not repesent an uncoerced majority of the Respondent's employees.

WE WILL NOT enforce the Local 17–18 union-security clause.

WE WILL NOT threaten our unit employees that we would go out of business if our employees continued their membership in the Union.

WE WILL NOT refuse to permit union representatives to visit our facilities for the purpose of meeting with unit employees to discuss matters related to wages, hours, and other conditions of employment, pursuant to the terms of our collective-bargaining agreement.

WE WILL NOT threaten union agents with severe bodily harm when visiting our facility to discuss wages, hours, and other conditions of employment, pursuant to the terms of our 1993 collective-bargaining agreement or any future bargaining agreement.

WE WILL NOT reduce the working hours of Moshe Nadov, or any other unit employee because of his or her membership in, or activities on behalf of the Union.

WE WILL NOT refuse to provide the Union with information requested by the Union, relating to terms and conditions of the unit employees covered by our 1993 collective-bargaining agreement, or any futurebargaining agreement.

WE WILL NOT refuse to meet with the Union to discuss any unilateral changes in our 1993 collective-bargaining agreement, or any future collective-bargaining agreement.

WE WILL NOT discharge or change the working conditions of any employee because of their membership in, and activities on behalf of the Union, or because they may give testimony in a Board proceeding.

WE WILL withdraw recognition of Local 17–18 and cease giving any effect to the terms of the collective-bargaining agreement with Local 17–18, and return to our unit employees covered by such agreement all dues and other moneys deducted from such employees.

WE WILL recognize the Union as the collective-bargaining representative of our employees set forth in the unit described in the Order and reinstitute all terms and conditions of the 1993 collective-bargaining agreement with the Union and make whole the unit employees for any moneys or monitary benefits they would have received pursuant to the terms and conditions of the 1993 collective-bargaining agreement with interest.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit described above, concerning new terms and conditions for a successor collective-bargaining agreement and, if an agreement is reached, execute such agreement in writing.

WE WILL pay to the Union all dues and fees that would have been deducted from the unit employees' pay and remit them to the Union with interest.

WE WILL pay to the Union all funds and other benefits required by the terms of the 1993 collective-bargaining agreement with interest.

WE WILL, on request, furnish to the Union all the information it requested, as described in the judge's decision.

WE WILL within 14 days from the date of this Order, offer Moshe Nadov full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Moshe Nadov whole for any loss of earnings and other benefits resulting from the reduction of his work hours and from his discharge, less any net interim earnings, plus interest

WE WILL, within 14 days from the date of this Order, remove from our files any reference to Moshe Nadov's unlawful discharge, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him, in any way.

KORNS BAKERY, INC.

Jonathan Leiner, Esq., for the General Counsel.
Thomas Bianco, Esq., of Jericho, New York, for the Respondent.
Elizabeth Orfan, Esq., of New York, New York, for the Petitioner.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on July 1 and 2 and on September 8, 9, and l0, l997, in Brooklyn, New York, and in New York, New York. All the above complaints issued in l993, except in Case 29–CA–20854, which issued in l997. The issues presented by the l993 complaints were tried before Administrative Law Judge James M. Morton. On November 2, l993, the case was postponed indefinitely to allow the General Counsel to secure approval of the United States Attorney General to grant immunity to a key witness. On January 3, l997, Judge Morton retired. Since January l996 the trial has been adjourned to permit settlement discussions, which to date have been unsuccessful. On March l3, l997, Associate Chief Judge Joel P. Biblowitz issued an Order that absent settlement the trial should recommence de novo.

On the entire record in this case, including my observation of the demeanor of the witnesses and a consideration of the briefs filed by Respondent Korn, Local 3, Bakery, Confectionery and Tobacco Workers Union (the Union), and the General Counsel, I make the following

FINDINGS OF FACT

At all times material, Korns Bakery, Inc. (Respondent) has been a New York corporation, with its office and place of business located at 4318, l5th Avenue, Brooklyn, New York. Respondent is engaged in the baking business, the wholesale and retail sale of baked goods. Respondent annually, and in the normal course of its business, has derived in excess of $500,000 from its retail sales. Respondent also annually purchases and receives baking supplies valued in excess of $50,000 either directly from firms located outside the State of New York, or from firms located within the State of New York each of which firms purchased such baking supplies directly from firms located outside the State of New York.

Since on or about August 22, l966, Korns Bakery, Inc., Debtor in Possession (Respondent Debtor) has been duly designated in a voluntary chapter ll bankruptcy petition filed in the United States Bankruptcy Court for the Eastern District of New York as the debtor in possession, with full authority over Respondent's operation and authority to exercise all powers necessary for the administration of Respondent's operations.

It is admitted, and I find, that since on or about August 22, l996, Respondent Debtor has been a successor in bankruptcy to Respondent.

It is admitted, and I find, that Respondent and Respondent Debtor (Respondents) are now, and have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted, and I find, that the Union and the United Production Workers Union Local 17–18 (Local 17–18) have been at all times material labor organizations within the meaning of Section 2(5) of the Act.

Respondent Korn had two owners, M. Berkowitz and Max Stern, each of whom owned 50 percent of the business and held the position of president and vice president, respectively. Stern admitted that in his position of vice president had the power to hire and fire employees. He was extremely evasive when questioned by the General Counsel, who called Stern as a section 611, hostile witness, and I, as to the supervisory authority of President and Part Owner Berkowitz. Only under intense questioning did he reluctantly admit that in his absence President and Owner Berkowitz could grant a production employee sick leave. When questioned as to whether President Berkowitz had the ability to hire and fire employees Stern replied that Berkowitz had the ability to exercise such power, but then qualified his answer that such power extended only to nonunit employees such as drivers who delivered Respondent Korn products and employees who collected money. When asked if Berkowitz observed a production employee drunk on the job, or simply not doing his job, Stern replied, "Well, if there's anybody who knows if he's capable for the job, it was only me." Based on the above testimony of Stern and on the authority inherent any individual who is a part owner and president of any corporation I conclude that both Stern and Berkowitz were supervisors and agents of Respondents.

The General Counsel also alleges that Slava Cohen was a supervisory employee. Slava Cohen was a unit employee and a member of the Union. Counsel for the General Counsel alleges that Cohen's supervisory status is established by the alleged discriminatee, Moshe Nadov, who testified that when he, Nadov, went into the single office upstairs, he spoke with President Berkowitz and asked for part of his paycheck in cash. Respondent had a practice at that time of paying part of their employees paycheck in cash. Nadov then testified that Berkowitz told him that Vice President Stern and Cohen told Berkowitz not to pay the cash portion of his paycheck. As set forth below, I find Nadov to be a credible witness; however, I do not credit that portion of his testimony that Cohen told Berkowitz not to pay Nadov the cash portion of his wages. I simply do not find it believable that Cohen, whether a supervisor or not, would tell Berkowitz, Respondent's president, not to pay Nadov the cash portion of his wages. Berkowitz did not testify during this trial. However, I do credit Nadov's testimony that Berkowitz told him that Stern had told him not to pay Nadov the cash portion of his wages.

Based on Sterns' evasive testimony, as to the supervisory authority of President and Owner Berkowitz, set forth above, and on other evasive testimony discussed below, and on my unfavorable impression concerning his overall demeanor, I conclude that Stern was not a credible witness, and I credit his testimony only where it is an admission or corroborates credible testimony relating to allegations set forth in the complaints.

Respondent Korn had entered into a series of collective-bargaining agreements with the Union, the last of which was effective by its terms from February 1, 1990, through January 31, 1993. These collective-bargaining agreements covered a unit of: ''All working foreman, head mechanics, or head maintenance persons, assistant working foreman, mechanic, first hands, second hands, packers and porters, excluding all other employees, business office clerical employees, guards, and supervisors, as defined in the Act." Respondent Korn employed an employee complement of up to l0 regular full-time employees, and up to 12 part-time employees, these were unit employees. In addition Respondent employed nonunit employees who made deliveries and collections of money, and one or two office clericals.

The 1990–1993 collective-bargaining contained various wage schedules, provisions for overtime payment after 7 or 7-1/2 hours. The workweek was set forth as 5 days per week. The collective-bargaining agreement also required Respondent to deduct and remit initiation fees and union dues to the Union, and to make pension and welfare contributions to the Union. The agreement also contained a vacation schedule, a provision requiring Respondent to provide work clothes to its employees, to pay them for the laundering of such work clothing, and to notify the Union of new hires. There is also a provision requiring Respondent to permit union officials to enter Respondent's facility at any time. In short the collective-bargaining agreement contained the usual provisions.

Sometime, on or about 1982, Stern and Berkowitz established another corporation called the 4322 Corporation. The owners were Berkowitz and Stern, who served as president and vice president, respectively. The certificate of incorporation sets forth as the corporate purposes such building and construction operations as paving, blasting, wrecking, and metal work. The certificate does not make any reference to baking. However under cross-examination by counsel for the General Counsel, Stern, initially gave evasive answers when asked whether the 4322 was incorporated and to what extent it performed baking operations. Only when confronted with a deposition taken in an unrelated Federal trial did he concede to the facts set forth in the deposition. Thus, Stern reluctantly admitted that about 75 percent of the 4322 employees performed baking work. There is no evidence that the 4322 employees performed any other work except baking work.[1] Stern reluctantly admitted that the 4322 Corporation performed its business at the single facility out of which Respondent Korn operated. In addition, 4322 produced and sold the same baked products to the same customers as Respondent Korn.

The 4322 Corporation employees were not represented by any labor organization until on or about 1992 when Respondent Korn recognized Local 17–18 as the collective-bargaining representative for all the baking employees employed by the 4322 Corporation and Respondent Korn. Respondent thereafter executed a collective-bargaining agreement with Local 17–18 covering all of these employees. The Local 17–18 agreement was effective from August 1, 1992, through July 31, 1995. The collective-bargaining agreement also contained a union-security provision which required all baking employees, as a condition of employment, to join Local 17–18 and to remit to the local such dues and other fees required by the Local 17–18 collective-bargaining agreement. All of this took place at a time when Respondent Korn had an existing contract with the Union. As a result of this collective-bargaining agreement with Local l7–18, Respondent Korn required all of its baking employees to join Local 17–18 as a condition of employment, and thereafter refused to abide by the provisions of the Union's collective-bargaining agreement including, inter alia, failing to pay on behalf of Respondent Korns employees the wages, overtime rates, vacation benefits, fringe benefits, deduction of union dues, and remit them to the Union. Respondent Korn also refused to make pension and welfare payments as required by their collective-bargaining agreement to the Union.

At sometime prior to the expiration of the Union's collective-bargaining agreement with Respondent Korn, on January 31, 1993, the 4322 Corporation dissolved and its employees were placed on Respondent Korns payroll.

The Union had no knowledge of the existence of the 4322 Corporation, their employment of baking employees, nor the recognition of Local l7–l8 by Respondent Korn and Respondent 4322, until sometime on or about August l992, when union officials became aware that Respondent was delinquent in its dues remissions, and payments to its' pension and welfare funds. Upon obtaining such information, the Union sent out Union Agents Larry Atkins, John Shifano, Joseph Rodriguez, and Stan Hermanowsky to investigate the situation.

Union Agent Atkins credibly testified that he and Schifano met with Respondent Vice President Stern in his second floor office, above the production area, while Rodriguez and Hermanowsky went into the production area to speak to the baking employees to find out just what was going on. Shifano made some initial explanation of the purpose of his visit , and Stern told him to "get the f—k out of my office . . . and take your two friends with you." Stern then backed Shifano and Atkins out of his office and down the stairs, hollering at Shifano, "I'm not going to let Local 3 put me out of business. Just get the f—k out of my office." Shifano, Atkins, Rodriguez, and Hermanowsky left Respondent's facility, but stood outside the doorway, which was blocked by Stern. Stern then told a man who had just arrived at Respondent's facility, and whom he referred to as his "partner" about the presence of the union representatives. The "partner" referred to by Stern told the union representatives to "[s]top harassing my partner [an obvious reference to Stern] Get the f—k out of here. Keep walking. Don't come back here anymore." Since Stern's only partner was Berkowitz, I conclude the "man" was Berkowitz.

Sometime on or about the end of October , and Union Business Agent Atkins again visited Respondent's facility. Atkins and Shifano entered the production area and were mingling with Respondent's employees when Stern approached them and told them "You bunch of f—king racketeers, get out of my shop." Such statement was made in the presence of Respondent's employees. Stern then backed the union officials out, in the presence of his employees with his fists clenched and his arms in the air.

Atkins and Schifano stood outside Respondent's facility with Stern blocking the door. At this time an individual referred to as "partner" by Stern in the previous conversation described above who I have concluded was Berkowitz, drove up to Respondent's facility, and in the presence of Stern hollered, "I told you guys don't come f—king around . . should break your f—king legs right here. I should lay you f—king guys out right here where you stand. Just get the f—k out of here."

I conclude that Respondent's employees heard, or became aware of the August and October incidents, describes immediately above. Both incidents took place in Respondent's facility in the obvious presence of Respondent's employees. The conversations that took place with the so-called "partner," whom, as set forth above and below, I conclude to be Owner and President Berkowitz. The first conversation took place in the late summer, while the second conversation took place in the very early autumn, during warm weather when the windows of Respondent's facility would be open. In both incidents, the "partner," Berkowitz obviously spoke in a loud voice that employees could easily hear through the open windows. Moreover, since both conversations originated in Sterns' office continued inside the plant, and then right outside Respondent's facility, by the doorway entrance, I conclude that Respondent's employees saw and heard or became aware of the statements of both Stern and Berkowitz.

I find Atkins to be a credible witness. I was impressed with his overall demeanor. He impressed me as a candid witness. His testimony was detailed and consistent on both direct and cross-examination. As set forth above, I have concluded that Stern is not a credible witness. Berkowitz did not testify.

As a result of the confrontations between union officials and Respondent President Berkowitz and Vice President Stern in August and October, described above, and the expiration of the January 1993 collective-bargaining agreement, the Union wrote letters to Respondent Korn on November 6 and 24, l992, requesting the current wages and other information relating to the wages, hours, and conditions of employment of all Respondent Korns baking (unit) employees. Respondent did not respond to these letters.

By letters dated November 6, 1992, and January 5, 1993, the Union requested that Respondent meet with the Union for the purpose of negotiating a new collective-bargaining agreement. Respondent Korn never replied to these letters.

Upon the discovery of the 4322 Corporation, whose operations were discussed in detail above, the Union's attorney wrote a letter Respondent Korn dated September 23, 1993, requesting detailed information concerning the relationship between Respondent Korn and the 4322 Corporation. Neither Respondent Korn or the 4322 Corporation ever replied to this letter. No collective-bargaining negotiations have taken place concerning

[1] I find the evasive testimony by Stern, described above further supports my conclusion that Stern is not a credible witness.

a successor bargaining agreement to the 1990–1993 collective-bargaining agreement.

Moshe Nadov, a unit employee, employed by Respondent Korn as a scaler had worked for Respondent for many years. He was a member of the Union, as required by the collective-bargaining agreement between the Union and Respondent Korn.

Sometime in September 1992, Nadov requested money from Sterm that he had paid to launder his work clothes. Stern refused. As set forth above Respondent was required to pay its' employees for laundering their work clothes.

Sometime on or about November 1992, Nadov spoke to Stern and complained about not receiving certain overtime pay that he claimed he earned. Stern told Nadov that he should thank God that he still had a job with Respondent. Nadov was never paid for such overtime worked.

Sometime on or about November 1992, Nadov went into Respondent's office and requested that portion of his paycheck that was usually paid in cash. It appears that Respondent had a practice of paying part of the employees wages in cash. Nadov spoke to Berkowitz, who was in the office at that time, and asked him for his cash portion of his wages. Berkowitz told Nadov that Stern had told him not to pay Nadov.

About 2 weeks later, Stern called Nadov into his office and told him that if Nadov insisted on remaining a member of the Union, he had no work for him. Stern then showed Nadov certain written material with the Local 17–18 logo on it, presumably an authorization card, and asked Nadov to become a member of Local 17–18. Nadov replied that he was a member of the Union and wanted to continue such membership. Stern then told Nadov that he was not paying the union pension or any of the benefits provided for in the collective-bargaining agreement between Respondent and the Union.

Nadov testified that sometime in November 1992 Cohen went to his workstation, that Cohen kneed him in the belly, and called him a "motherf—ker."

Sometime on or about November 1992, Cohen called Nadov upstairs to Respondent's office. Berkowitz was present. In the presence of Berkowitz, Cohen handed Nadov a document which changed his work hours from daytime to evening hours.

About a month later Stern told Nadov that he shouldn't come to work that Sunday as he only had 4 days available for him that week. However, Nadov did work that Sunday, but Respondent Korn never paid him for such Sunday work.

Nadov received his final paycheck from Respondent on August 27, 1993. He was not terminated or laid off, but continued to work until September 6, 1993, when he received a serious work related injury to his finger which prevented him from working for several months. Nadov was never paid for the work he performed for Respondent for the period of August 27 through September 6.

On November 2, 1993, Nadov testified in a trial of this case before Administrative Law Judge James F. Morton. Nadov was the only Respondent Korn employee to testify. He testified as athe General Counsel witness in support of the complaints that had issued up to that date. That trial was ultimately adjourned sine die, for the reasons set forth above.

On November 17, 1993, Nadov received a doctors note which stated that he was able to return to work. On November 20, Nadov reported to Respondent's facility ready to resume work. Nadov spoke to President Berkowitz' son, Joshua, and asked to speak to Stern. Joshua told Nadov that Stern was not in the office, but proceeded to telephone Stern at home. Berkowitz' son spoke with Stern and, at the end of this telephone conversation told Nadov that he had been informed by Stern that he was no longer employed by Respondent. Respondent has never recalled Nadov.

I credit Nadov's testimony, except as set forth above. I was impressed with his demeanor. He testified in a forthright manner. His testimony was detailed, and consistent on both direct and cross-testimony. To the extent that Sterns testimony is in conflict with that of Nadov, I credit Nadov. As set forth above, I have concluded that Stern is not a credible witness. Stern and Nadov were the only witnesses to give testimony concerning the allegations of his unlawful discharge.

On November 27, 1996, and February 26, the parties engaged in negotiations.[2] Elizabeth Orfan, the Union's attorney and Union President Martas attended both meetings on behalf of the Union. Arthur Kaufman, Respondent's attorney, and Stern represented Respondent. The November meeting lasted about 10 minutes. The February meeting lasted about 25 minutes.

The uncontradicted testimony of witnesses Martas and Kaufman and the statement of the Union's position by Union Attorney Orfan who represented the Union during the course of this trial, but who did not testify, is consistent. At both meetings, Orfan requested that Respondent sign a recognition agreement before they discussed terms and conditions for a collective-bargaining agreement. Attorney Kaufman took the position that the parties should first reach an agreement as to the terms of a collective-bargaining agreement before he would agree to recognize the Union. At this time Respondent was still taking the position that it had a valid contract with Local 17–18.

A complaint in Case 29–CB–8572 had issued alleging that Local 17–18 and Respondent had executed a collective-bargaining agreement covering the unit set forth in the collective-bargaining agreement between the Union and Respondent at a time when the Unions' collective-bargaining agreement was still in effect and Local 17–18 did not represent an uncoerced majority of Respondent's employees. Before the trial of this case, Local 17–18 had entered into a Board settlement of all the allegations described in the above complaint. However, Respondent continued to deny the related 8(a)(1) and (2) allegations.

During the February meeting, Attorney Orfan requested Respondent to supply a list of its employees, their job classifications, and home addresses. Respondent never supplied such information. Respondent did propose a contract with a pay rate at the lawful minimum wage rate, with no sick leave and limited vacation time. The Union refused, and the meeting ended. There have been no further meetings between the parties.

On March 27, 1997, Union Attorney Adrienne Saldana sent Attorney Kaufman a letter requesting recognition. Kaufman replied with a letter on March 28, which did not address the issue of recognition but indicated that Respondent was willing to meet with the Union if requested by the Union, with the hope of reaching an agreement.

[2] The General Counsel alleges in its complaint that such negotiations were collective-bargaining negotiations. Counsel for the Union contended at trial and in her brief that such negotiations were settlement discussions.

I. ANALYSIS AND CONCLUSIONS

A. The Alleged Supervisory Status of Cohen

There is absolutely no credible or direct evidence that Cohen possessed any of the criteria set forth in Section 2(11) of the Act, defining a supervisor. Accordingly, I conclude that Cohen was neither a supervisor, or agent of Respondent within the meaning of the Act.

B. The 8(a)(1) Violations

The credible evidence establishes that Respondent Vice President Stern advised employee Nadov in about October or November 1992 that if Nadov wanted to stay in Local 3, Respondent had no work for him. This statement constitutes an unlawful threat in violation of Section 8(a)(1). *Honeycomb Plastics Corp*., 288 NLRB 413, 418–419 (1988) (re comments of Supervisor Hooker).

The credible evidence also establishes that Berkowitz threatened Union Official Larry Atkins and Union Business Agent John Schifano in front of Respondent's facility in late October 1992 that he would "break [their] f—king legs" and "lay you f—king guys out right here." Berkowitz' threats of bodily harm, within the hearing of employees, constitute a violation of Section 8(a)(1). *Southern Maryland Hospital*, 276 NLRB 1349, 1353 (1985).

The General Counsel contends that Slava Cohen kneed Nadov in the belly in about November 1992 and called him "motherf—ker." As set forth above, I conclude Cohen was not a supervisor within the meaning of the Act, nor is there any evidence that he was an agent of Respondent for this purpose. Accordingly, I conclude that Respondent did not violate Section 8(a)(1) as contended by Respondent.

Respondent 4322 Corporation is an Unlawful Alter Ego

I conclude that Respondent 4322 Corporation constitutes an unlawful alter ego under Board law. The alter ego doctrine focuses on a respondent's attempt to avoid the obligations of a collective-bargaining agreement through a sham transaction or mere technical change. *BMD Sportswear Corp*., 283 NLRB 142, 154 (1987). The Board also considers such factors as common ownership and management; common supervision; common business purpose and nature of operations; and common customers. *Fugazy Continental Corp*., 265 NLRB 1301 (1982).

The undisputed evidence demonstrates clearly that Respondent 4322 Corporation satisfies the factors of the alter ego doctrine. Stern testified that he created Respondent 4322 solely to avoid Local 3. The 4322 certificate of incorporation sets forth numerous false corporate purposes and omits altogether any reference to the baking business. Nevertheless, that is the only work performed by 4322. Moreover, Respondent would not let these baking employees join the Union. Additionally, Respondent kept all knowledge of the existence of the 4322 Corporation from the Union. This evidence establishes that Respondent Korn created the 4322 Corporation as a sham, to disguise and avoid dealing with the Union. *BMD Sportswear Corp*., supra.

Moreover the evidence establishes that Berkowitz and Stern each serve as officers and supervisors of Respondent Korn and Respondent 4322 Corporation. Both Respondent Korn and Respondent 4322 engage in the same business from the same facility and sell products to the same customers. *Fugazy Continental Corp*., supra.

C. The Unlawful Unilateral Changes

The evidence establishes that Respondent implemented numerous changes in the unit employees' wages and terms and conditions of employment without bargaining with, or obtaining agreement from the Union. Respondent Korn changed the wages of the unit employees, ceased deducting and remitting dues and fund contributions for the unit employees, and ceased reporting new hires to the Union, as required by its bargaining agreement with the Union. Additionally, Respondent Korn paid no overtime wages, changed the workweek of Nadov from 5 to 4 days, required him to pay for the laundering of his work clothes; and changed his working hours from evenings to mornings. Also, Respondent Korn denied access to the union agents in September and October 1992.

Each of these changes contradicted the terms of the Local 3's bargaining agreement and were mandatory terms and conditions of employment. Respondent Korn never requested the Union to bargain of any of these unilateral changes. The Union never agreed to these unilateral changes or even knew about them. I therefore conclude that Respondent implemented the above unilateral changes in violation of Section 8(a)(1) and (5) of the Act. *NLRB v Katz*, 369 U.S. 736 (1962).

Respondent Korn contends that the Union, by its agents, acquiesced in such unilateral changes.

Respondent's vice president, Stern, testified that Union Business Agent John Schifano and perhaps earlier business agents permitted Respondent to report to the Union fewer unit employees than actually existed in return for cash payments to themselves.

Stern also testified that Union President Sheinkman and other officials permitted him at a 1988 trustees' meeting to recalculate inaccurately the number of employees he reported to the Union. Union President Martas credibly testified that he has no knowledge of the contentions by Stern set forth above.

The Board refuses to attribute to a union principal the outrageous unauthorized actions of a local agent. In *Shipbuilders (Bethlehem Steel*), 277 NLRB 1548, 1565–1566 (1986), the Charging Party Employer sought to bind the national union to local agent Harmon's midterm negotiations which undermined the national's contract. The judge and Board refused to bind the national union because local agent Harmon's serious breach of loyalty required the employer to realize that Harmon lacked apparent authority to act for the national. Id.

In the instant case, Union Business Agent Schifano allegedly accepted payoffs to permit Respondent Korn to report to the Union fewer than the actual number of unit employees. Schifano's alleged conduct, if it occurred, decreased the flow of contractual moneys to the Union and eroded the Union's ability to represent the unit. I do not attribute Schifano's alleged conduct to the Union because I conclude Stern necessarily realized that Schifano lacked apparent authority to harm the Union's interests. *Shipbuilders (Bethlehem Steel*), supra.

The Restatement 2d*, Agency* completely substantiates the Board's refusal to bind the Union principal under these circumstances. Section 112 reads in full:

> *Unless otherwise agreed, the authority of an agent terminates if, without knowledge of the principal, he acquires adverse interest of if he is otherwise guilty of a serious breach of loyalty to the principal.* [Restatement 2d. *Agency* sec. 112 (1958).]

Union President Martas credibly denied any knowledge of Schifano's alleged misconduct. Respondent's only witness to support its contention is Stern, whom I have found to be an entirely incredible witness.

Accordingly, I conclude that based on the agency principles set forth above in *Shipbuilders,* supra, and the Restatement 2d. *Agency* sec. 112 supra*,* that Schifano's alleged misconduct is not attributable to the Union. Further, in view of my credibility resolution as to Stern, I also conclude that Respondent has submitted no credible evidence to support such contention.

D. The Refusals to Provide Information

The evidence establishes that Respondent Korns repeatedly refused to provide information pursuant to the lawful requests of the Union. In this regard union officials wrote letters to Respondent on November 6 and November 24, 1992, requesting wage-related information concerning Respondent's unit employees. Former Union Attorney Weston wrote to Respondent on September 29, 1993, explicitly requesting information to verify the apparent alter ego relationship between Respondents Korns and 4322. In addition present Union Attorney Orfan, requested wage-related information regarding Korn's unit employees during their union meeting on February 26, 1997, and again in writing on March 27, 1997. This letter also sought information regarding the benefits, disciplinary documents, and earnings reports pertaining to Korn's unit employees. Respondent never provided any of this information to the Union.

The Union's requests of November 6 and 24, 1992, and its oral and written requests in February and March 1997 directly concerned the terms and conditions of employment of Respondent's unit employees. Such requests are preemptively relevant under the Board law.

Former Counsel Weston's requests of September 29, 1993, sought to substantiate the alter ego relationship between Respondents Korns and 4322. The requested information would substantiate 4322's duty to bargain with the Union and would assist the Union to represent 4322's unit employees. I find, Respondent's refusal to provide the requested information violated Section 8(a)(5) of the Act. *NLRB v Truitt Mfg. Co*., 351 U.S. 149 (1956).

E. The Refusal to Meet and Bargain

Respondent Korns repeatedly refused to meet and bargain, on request, with the Union. Union officials wrote to Respondent on November 30, 1992, and on January 5, 1993, requesting collective-bargaining for a successor agreement. Respondent never replied to these requests. Accordingly, I find that Respondent violated its duty under Section 8(a)(5) of the Act to bargain in good faith with the collective-bargaining representative of its employees. *Stardust Hotel & Casino*, 317 NLRB 926, 931 (1995).

F. The Recognition and Contract with Local 17–18

Respondent Korns recognized Local 17–18 as the collective-bargaining representative of its baking employees in about June or July 1992. Respondent also entered into a contract with Local 17–18 at about that time. The Local 17–18 contract required membership in that union as a condition of employment. Respondent undertook these actions at a time when the Union was the lawful collective-bargaining representative of all Respondent's baking employees. I conclude that Respondent's recognition and contract with Local 17–18 was a violation of Section 8(a)(1), (2), (3), and (5) of the Act. *Walton Mirror Works*, 313 NLRB 1279 (1994).

G. The Discrimination Against Moshe Nadov

The evidence establishes that Respondent Korns refused to pay Nadov his final paycheck and discharged him on about November 20, 1997. I conclude that Respondent took these actions because Nadov engaged in protected concerted activities and supported the Union. I also conclude that Respondent took these actions because Nadov filed a charge with the Board, and testified at the earlier trial in this matter.

The credible evidence shows that Moshe Nadov engaged in union related and protected concerted activities and Respondent Korns knew about them. In this regard, Nadov complained to Stern that he was not receiving overtime pay, as the contract required. He told Stern afterward, when Stern showed him the Local 17–18 document, that he, Nadov, was a member of the Union, and that Stern could do as he pleased.

In determining whether an employer discriminates against an employee because of his membership in or activity on behalf of a labor organization, the General Counsel has the burden of proving that the employees' membership in, or activities on behalf of such labor organization was a motivating factor in the discrimination alleged. Once such factor is established, the burden then shifts to the employer to establish that such action would have taken place in the absence of the employees' membership in, or activities on behalf of such labor organization. *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1982); *Wright Line*, 251 NLRB 1083 (1980) enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The evidence shows that Stern also told Nadov after hearing about his overtime pay complaint that Nadov should thank God he had work with Respondent. About 1 or 2 weeks later Stern also Nadov, that if Nadov wanted to remain in the Union Stern had no work for him. Nadov repeated his support for the Union, and Stern replied that Stern was not paying him his ''pension or benefits . . . nothing.'' The evidence also establishes that Respondent Korns retaliated against Nadov after he repeated his support for the Union. In this regard Stern notified Nadov about 2 weeks later that he had only 4 days' work for him. This represents an independent violation of Section 8(a)(1) and (3) as discussed below.

I conclude such conduct establishes both antiunion animus and that Respondent was motivated to discharge Nadov because of his union and concerted activities.

The credible evidence further established that Nadov presented himself to Respondent on two occasions in November 1993 and offered to return to work following his injury. Berkowitz thereafter notified Nadov that he was not working there anymore.

Based on the facts set forth as described above and on my conclusions, I conclude that the General Counsel has established that a strong motivation to discharge Nadov because of his union activities. The burden now shifts to Respondent to establish that Nadov would have been discharged notwithstanding such motivation.

Respondent, attempted to meet its *Wright Line* burden through the incredible testimony of Stern, who merely presented a contrary version of the facts contradicting Nadov's credible testimony. In view of my unfavorable credibility resolution of Stern I do not credit his testimony. No other Respondent witness testified on behalf of Respondent in connection with Nadov's discharge.

Accordingly I conclude that the reduction of Nador's hours and the subsequent discharge of Nadov was a violation of Section 8(a)(1) and (3) of the Act.

The evidence also established that Nadov filed an unfair labor practice charge with the Board and testified in an earlier trial of this matter on November 2, 1993. He was the only employee employed by Respondent to testify for the General Counsel. Respondent discharged Nadov in late November 1993, about 3 weeks after he testified.

The Board utilizes the *Wright Line* framework to analyze an employer's discrimination against employees who enlist the Board's processes. *Heck's Inc*., 280 NLRB 475, 476 (1986). Nadov filed the charge in Case 29–CA–17040–2 and testified for the General Counsel in the prior trial of this instant case before Judge Morton. In the timing and my finding that Respondent terminated Nadov in violation of Section 8(a)(1) and (3), the General Counsel establishes a strong prima facie case.

Thus it is the burden of Respondent to establish that Respondent would have discharged Nadov notwithstanding such Board activities.

For the same reasons that I concluded that Respondent had not established its *Wright Line* burden in the Section 8(a)(1) and (3) violation described above, I conclude that Respondent failed to meet its *Wright Line* burden in connection with the Section 8(a)(1) and (4) violation alleged in the complaint.

I therefore conclude that by discharging Nadov, Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

H. The Meetings on November 27, 1996, and February 26, 1997

The General Counsel contends that the Union and Respondent met on November 27, 1996, and February 26, 1997, for the purpose of conducting collective-bargaining negotiations and that Respondent Korns was not bargaining in good faith because its representatives and Attorney Kaufman, declared a premature impasse.

The uncontradicted facts are that on November 27, 1996, and February 26, 1997, meetings were held between the Union and Respondent. Present at these meetings were Elizabeth Orfan, attorney for the Union and Union President, Martas represented the Union. Arthur Kaufman, attorney for Respondent, represented Respondent.

During both meetings Orfan demanded recognition, Kaufman refused, taking the position that they could discuss contract provisions and if they reached agreement, then recognition would take care of itself. Between these two meeting the Union sent Respondent letters demanding recognition, but did not receive any response.

It must be noted that the last collective-bargaining agreement between the Union and Respondent expired in 1993. In the interim period, Respondent signed a collective-bargaining agreement with Local 17–18 covering Respondent's baking employees. As set forth above there was a subsequent settlement between the Board, the Union, and Local whereby Local 17–18 agreed to withdraw its representation of the Korns employees, but Respondent Korns continued to recognize Local 17–18.

In addition, Orfan made it clear during both of these meetings that she considered them to be "settlement discussions," rather than collective-bargaining negotiations.

During the trial of this case and in her brief, Orfan repeatedly stated that "Local 3 viewed these meetings as part of a continuing effort to settle the outstanding legal actions," including the NLRB charges, pending against Respondent Korns. During the two meetings and in documents referring to those meetings, Local 3 explained to Respondent Korns that any settlement of the outstanding legal actions would have to include a signed recognition agreement designating the Union as the exclusive collective-bargaining representative of Respondent's employees.

The Union at all times insisted on a signed recognition agreement because it took the position that the parties were engaged in settlement discussions, not traditional collective-bargaining negotiations where recognition would be assumed or implied. Absent recognition, the Union was not willing to discuss a successor contract. Such discussions would be purely academic in the absence of recognition. This is especially true where, in this case, Respondent was presently recognizing and abiding by an existing collective-bargaining agreement with Local 17–18. The Local 17–18 contract with Respondent was not terminated until August 1, 1997, and that termination was the product of settlement discussions between Local 17–18 and the Union.

Counsel for the General Counsel took exception to any statements by Orfan during the trial about such meetings being "settlement discussions" because such characterization of these meetings was nonconsistent with the General Counsel's complaint which alleged these meetings as collective-bargaining negotiations, Counsel for the General Counsel further contended that such evidence was inconsistent with the General Counsel's theory of the case.

I conclude the November 1996 and February 1997 meetings were settlement discussions, rather than collective-bargaining negotiations. In reaching this conclusion I rely on the following factors:

(a) At the time of such discussions Respondent had a collective-bargaining agreement with Local 17–18.

(b) At all times during these discussions Union Attorney Orfan, demanded recognition as a condition precedent to collective-bargaining negotiations.

(c) Between the November 1996 meeting and the February 1997 meeting the Union by letters demanded recognition. As set forth in the Union's brief: "Absent recognition . . . provided to Local 3 . . . Local 3 was not willing to discuss a successor contract."

(d) These meetings took place shortly before the commencement of the trial on July 2, 1997, which suggests that such meetings were for settling the case rather than traditional collective-bargaining negotiations.

Accordingly, I conclude that the above meetings were for the purpose of reaching a settlement, I dismiss the complaint allegations alleging Respondent was bargaining in bad faith during the November 1996 and February 1997 meetings.

However, since Respondent admittedly refused to recognize at a time that I conclude the Union was the collective-bargaining representative of Respondent's baking employees, I conclude that Respondent failed to recognize and bargain in good faith with the Union, in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent Korns is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent 4322 is an alter ego of Respondent Korns.

3. Respondent Debtor in Possession, pursuant of the Federal bankruptcy laws, has taken over the operation of Respondent Korns.

4. Respondents Korns, 4322, and Debtor in Possession constitute a single employer.

5. The Union and Local 17–18 are labor organizations within the meaning of Section 2(5) of the Act.

6. At all times material, the Union has been the exclusive collective-bargaining representative of Respondent's baking employees.

7. Since February l, 1987, through January 31, 1993, Respondent has been a party to successive collective-bargaining agreements with the Union covering a unit of:

> Working Foreman, head mechanics, or head maintenance persons, assistant working foreman, mechanics, first hands, second hands, packers and porters, excluding all other employees, business office clerical employees, guards and supervisors as defined in the Act.

8. Respondent made various unilateral changes, described in detail above, in their collective-bargaining agreement with the Union without notifying the Union about such proposed changes, and without bargaining with the Union concerning such proposed changes in violation of Section 8(a)(1) and (5) of the Act.

9. Respondent executed a collective-bargaining agreement with Local l7–18 covering the bargaining unit set forth and described in Respondent's collective-bargaining agreement with the Union at a time when such employees were represented by the Union and at a time when Local 17–18 did not represent an uncoerced majority of Respondent's employees, in violation of Section 8(a)(1), (2), and (5) of the Act.

10. Respondent's collective-bargaining agreement with Local 17–18 contained a union-security clause.

11. Pursuant to the union-security clause, described above in paragraph 10, Respondent collected dues and other moneys, and remitted such funds to Local 17–18, in violation of Section 8(a)(1), (2), and (3) of the Act.

12. Respondent threatened its unit employees that it would go out of business if its employees continued their membership in the Union in violation of Section 8(a)(1) of the Act.

13. Respondent refused to permit union representatives to visit its facilities for the purpose of meeting with unit employees to discuss matters related to wages, hours, and other conditions of employment, pursuant to the terms of their collective-bargaining agreement, in violation of Section 8(a)(l) and (5) of the Act.

14. Respondent threatened union agents with severe bodily harm when they attempted to visit Respondents' facility to discuss wage, hours and other conditions of employment, pursuant to the terms of their collective-bargaining agreement, in violation of Section 8(a)(1) and (5) of the Act.

15. Respondent, at various times,refused to provide the Union with information, requested by the Union, relating to the terms and conditions of the unit employees covered by the parties' collective-bargaining agreement in violation of Section 8(a)(l) and (5) of the Act.

16. Respondent refused to meet with the Union to discuss various unilateral changes in the parties collective-bargaining agreement in violation of Section 8(a)(1) and (5) of the Act.

17. Respondent reduced Nadov's working hours because of his membership in the Union in violation of Section 8(a)(1) and (3) of the Act.

18. Respondent discharged employee Moshe Nadov because of his membership and activities in the Union, and because he gave testimony in a Board proceeding in violation of Section 8(a)(l), (3), and (4) of the Act.

REMEDY

Respondent must withdraw its recognition of Local 17–18 and cease giving any effect to the terms of their collective-bargaining agreement with Local 17–18, and return to the unit employees covered by such agreement all dues and other moneys deducted from such employees to these employees.

Respondent must recognize the Union as the collective-bargaining representative of its employees set forth in the unit described above and reinstitute all terms and conditions of the 1993 collective-bargaining agreement with the Union. In addition, Respondent must make whole the unit employees represented by the Union for any moneys or monitory benefits they would have received pursuant to the terms and conditions of the 1993 collective-bargaining agreement with interest as computed by *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

Respondent must pay to the Union all dues and fees that would have been deducted from the unit employees' paychecks and remit them to the Union with interest as computed above.

Respondent must pay to the Union all funds and, other benefits required by the terms of the 1993 collective-bargaining agreement with interest as computed above.

Respondent must, on request by the Union, bargain in good faith with the Union, as the exclusive collective-bargaining representative of the bargaining unit described above, concerning new terms and conditions for a successor collective-bargaining agreement, and if an agreement is reached, execute such agreement in writing.

Respondent must, on request by the Union, furnish to the Union all the information, respondent refused to furnish, described above, and any additional information requested by the Union to formulate bargaining proposals, or to police any bargaining agreement agreed upon.

Having disciminatorily reduced Nadov's working hours and discharged Nadov in violation of the Act, Respondent, must offer reinstatement to him to his former position, without prejudice to his seniority or other rights or, if such position does not exist, to a substantially equivalent position, and make him whole for any loss of earnings and/or other benefits he may have suffered since his working hours were reduced, computed on a quarterly basis less any interim earnings as prescribed in *New Horizons for the Retarded*, supra.

Respondent shall also expunge from its records all references to Nadov's discharge and notify him in writing that this has been done.

[Recommended Order omitted from publication.]